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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, You are never reluctant to bless us with exactly what we need for each day's challenges and opportunities. Sometimes we are stingy receivers who find it difficult to open our tight-fisted grip on circumstances and receive the blessing that You have prepared. You know our needs before we ask You, but You wait to bless us until we ask for help. We come to You now honestly to confess our needs. Lord, we need Your inspiration for our thinking, Your love for our emotions. Your guidance for our wills, and Your strength for our bodies. We have learned that true peace and lasting serenity results from knowing that You have an abundant supply of resources to help us meet any trying situation, difficult person, or disturbing complexity, and so we say with the psalmist, ''Blessed be the Lord, who daily loads us with benefits.''—Psalm 68:19. Amen.

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PLEDGE OF ALLEGIANCE

The Honorable SLADE GORTON, a Senator from the State of Washington, led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

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RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. GORTON). Under the previous order, the leadership time is reserved.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

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SCHEDULE

Mr. SPECTER. Mr. President, on behalf of the leader, I have been asked to announce that we will resume consideration of H.R. 4762. Under the previous order, there will be closing remarks on the bill with a vote on final passage to occur at approximately 9:40 a.m. and following that vote, a vote on or in relation to the Frist amendment, which is the Frist amendment to the Labor, HHS, and Education appropriations bill, will occur.

I have been asked to announce that it is the leader's intention to finish this bill by midafternoon and then to proceed to the Interior appropriations bill. I note a smile by our distinguished Presiding Officer. He has the Interior bill. But that is what the script says. We will be pushing as hard as we can to accomplish that and get that done. Our distinguished leader was in a persevering, strong mood last night, and I assume he will be this morning as well. We want people who have amendments to come to the floor. We will work out a schedule and work out time agreements so we can meet that demanding schedule.

I thank the Chair and yield the floor.

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INTERNAL REVENUE CODE OF 1986 AMENDMENT

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 4762, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4762) to amend the Internal Revenue Code for 1986 to require 527 organizations to disclose their political activities.

The PRESIDING OFFICER. Under the previous order, there will now be 7 minutes for closing remarks, with 5 minutes of that time to be under the control of the Senator from Arizona, Mr. MCCAIN.

The Senator from Arizona.

Mr. MCCAIN. Mr. President, I yield 2 minutes of my 5 minutes to the Senator from Wisconsin, Mr. FEINGOLD.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, despite the claims in the press by some opponents of this measure, this bill is fair and evenhanded. It affects groups on both sides of the political spectrum. It is not aimed at any particular group or players in the elections. It is aimed at getting rid of secrecy. It is not an attempt to silence anyone. It is an attempt to give the American people information. They are entitled to have this information about the groups who flood the airwaves with negative ads during an election campaign.

I thank all my colleagues who supported the McCain-Feingold-Lieberman amendment on the Department of Defense bill. They can be proud of what they did. With that vote, they have started in motion a process that has brought us to this day, when we will quickly pass and send to the President for his signature a good, fair, bipartisan bill that does the right thing for the American people.

Mr. ROTH. Mr. President, I believe in full disclosure of who is funding political campaigns. The public has a right to know who is paying for the political advertisements and direct mail that they see. While I think this bill may not go far enough in requiring disclosure of these groups, it is a first step and that is why I support H.R. 4762.

H.R. 4762 requires disclosure for political organizations which are tax exempt under section 527 of the Internal Revenue Code. 527 organizations which directly advocate the election or defeat

of a particular candidate for federal office are subject to federal election campaign law disclosure obligations. However, 527 organizations that do not directly advocate for the election or defeat of a particular candidate are not subject to these federal election campaign laws and are not obligated to disclose the names of their contributors nor how they send the contributions they receive. This bill correctly adds disclosure requirements to these 527 organizations so that the activities performed and identity of contributors to these previously undisclosed will be available for public scrutiny, much like those 527 organizations that have to disclose under the federal election laws.

I am also glad that this bill follows the constitutional requirement that revenue measures originate in the House of Representatives. If the revenue measure did not originate in the House, then any member could subject the bill to a ''blue slip,'' thereby voiding the entire bill, not just the part of the bill that is a revenue measure. I opposed an amendment similar to this bill a few weeks ago when it was offered as an amendment to the Defense Authorization bill because adoption of that amendment would have subjected the Defense Authorization bill to such a ''blue slip'' challenge. Since we are taking up a House-originated revenue measure, I do not have the concerns which forced me to vote against the previous amendment.

However, I do have some concerns with this bill. First, this bill is a tax measure and tax measures should first be addressed by this committee of jurisdiction, the Finance Committee. This we have not done. In fact, the Fiance Committee was scheduled to have a hearing on July 12, 2000 to review this and other similar legislation dealing with disclosure of political activity by tax-exempt and other organizations. This hearing will not happen now and we will not be able to have the Finance Committee review how effective this legislation will be.

My second concern is that this bill may not do enough. By only focusing on disclosure in one type of tax-exempt organization and not on others, we leave open the use of the other type of tax-exempt organizations by those who want to hide their contributions and activity behind the cloak of anonymity that these tax-exempt organizations provide. This view is shared by the staff of the Joint Committee on Taxation.

Finally, I am concerned that this legislation requires the Internal Revenue Service to do things that it is not prepared to do with regard to disclosure. For example, under the bill reported out of the Ways and Means Committee, the IRS could partner with another agency—most likely the Federal Election Commission—to provide that the results of the 527 disclosure to the public. Unfortunately, this and other technical matters that were addressed in the Ways and Means Committee bill were not incorporated in this bill. I fear that we will have to address these technical issues in the future in order to make the disclosure provisions work to effectively provide this information to the public.

Because this bill is a first step and that some disclosure is better than no disclosure, I will vote for H.R. 4762.

Mr. President, I ask unanimous consent that a letter from the Brennan Center for Justice expressing the view that this bill requiring disclosure by 527 organizations is constitutionally sound be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

BRENNAN CENTER FOR JUSTICE,
New York, NY, June 28, 2000.

DEAR SENATOR: I am writing to express the views of the Brennan Center for Justice at New York University School of Law on the constitutional validity of attempts to seek disclosure from organizations covered by Section 527 of the Internal Revenue Code, as contained in the Lieberman-Levin-Daschle-McCain Bills (S.B. 2582 and 2583).

Senate Bill 2582 seeks to completely close the current Section 527 loophole, under which some organizations are claiming that they exist for the purpose of influencing electoral outcomes for income tax purposes, but that they are not ''political committees'' for purposes of federal election law. Senate Bill 2582 clarifies that tax exemption under Section 527 is available only to organizations that are ''political committees'' under FECA. Senate Bill 2583 is a more limited bill, which requires Section 527 organizations to disclose their existence to the IRS, to file publicly available tax returns, and to file with the IRS and make public reports disclosing large contributors and expenditures.

Both of these bills are constitutionally sound. *Buckley v. Valeo,* 424 U.S. 1 (1976), clearly established that groups whose *major purpose* is influencing elections—the operative test under both the Federal Election Campaign Act (FECA) and under Section 527 of the Internal Revenue Code—are appropriately subject to federal disclosure laws. A close textual analysis of *Buckley* reveals that the Supreme Court explicitly recognized the legitimacy of mandatory disclosure laws for organizations whose major purpose is influencing elections.

UNDERSTANDING BUCKLEY'S DISCLOSURE LIMITATIONS

In *Buckley v. Valeo,* the Supreme Court considered the constitutional validity of, among other things, various disclosure provisions that Congress had enacted on federal political activity. In general, the Court found mandatory disclosure requirements to be the least restrictive means for achieving the government's compelling interests in the campaign finance arena. However, the Court believed that, while it was constitutionally permissible to require advocacy groups that ''expressly advocate'' for or against particular federal candidates to comply with federal disclosure laws, advocacy groups that engage in a mere discussion of political issues (so-called ''issue advocacy'') cannot be subjected to public disclosure.

The Supreme Court was concerned that FECA could become a trap for unwary political speakers. Advocacy groups or individuals that participate in the national debate about important policy issues might discover that they had run afoul of federal campaign finance law restrictions simply by virtue of their having mentioned a federal candidate in connection with a pressing public issue. The Court found that FECA's disclosure provisions, as written, raised potential problems both of vagueness and overbreadth.

Under First Amendment ''void for vagueness'' jurisprudence, the government cannot punish someone without providing a sufficiently precise description of what conduct is legal and what is illegal. A vague or imprecise definition of regulated political advocacy might serve to ''chill'' some political speakers who, although they desire to engage in pure ''issue advocacy,'' may be afraid that their speech will be construed as regulable ''express advocacy.'' Similarly, the overbreadth doctrine in First Amendment jurisprudence is concerned with a regulation that, however precise, sweeps too broadly and reaches constitutionally protected speech. Thus, a regulation that is clearly drafted, but covers both ''issue advocacy'' and ''express advocacy'' may be overbroad as applied to certain speakers.

The Court's vagueness and overbreadth analysis centered on two provisions in FECA—section 608(e), which adopted limits on independent expenditures, and section 434(e), which adopted reporting requirements for individuals and groups. For these two provisions, the Supreme Court overcame the vagueness and overbreadth issues by adopting a narrow construction of the statute that limited its applicability to ''express advocacy.'' However, the Court made it absolutely clear that the ''express advocacy'' limiting construction that it was adopting for these sections *did not apply* to expenditures by either candidates or political committees. According to the Court, the activities of candidates and political committees are ''by definition, campaign related.'' *Buckley,* 424 U.S. at 79.

The ''express advocacy'' limitation was intended by the Court to give protection to speakers that are not primarily engaged in influencing federal elections. However, because candidates and political committees have as their major purpose the influencing of elections, they are not entitled to the benefit of the ''express advocacy'' limiting construction. The Supreme Court never suggested, as no rational court would, that political candidates, political parties, or political committees can avoid all of FECA's requirements by simply eschewing the use of ''express advocacy'' in their communications. As discussed above, the Supreme Court wanted to avoid trapping the unwary political speaker in the web of FECA regulation. However, for political parties, political candidates, and political committees, which have influencing electoral outcomes as their central mission, there is no fear that they will be unwittingly or improperly subject to regulation.

* * * * *

The *Buckley* Court's first invocation of the ''express advocacy'' standard appears in its discussion of the mandatory limitations imposed by FECA section 608(e) on independent expenditures. Section 608(e)(1) limited individual and group expenditures ''relative to a clearly identified candidate'' to $1,000 per year. The Court, in analyzing the constitutional validity of the $1,000 limit to independent expenditures by groups and individuals, focused first on the issue of unconstitutional vagueness. The Court noted that although the terms ''expenditure,'' ''clearly identified,'' and ''candidate'' were all defined in the statute, the term ''relative to'' a candidate was not defined. *Buckley,* 424 U.S. at 41. The Court found this undefined term to be impermissibly vague. Id. at 41. Due to the vagueness problem, the Court construed the phrase ''relative to'' a candidate to mean ''advocating the election or defeat of'' a candidate. *Id.* at 42.

Significantly, the Court did not adopt a limiting construction of the term ''expenditure,'' which appears in a definitional section of the statute at section 591(f). Rather, the Court narrowly construed only section 608(e). *Id.* at 44 (''in order to reserve the provision against invalidation on vagueness grounds, §608(e)(1) must be construed to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office.''). The limitations under section 608(e) apply only to individuals and groups. *Id.* at 39–40. Political parties and federal candidates have separate expenditure limits that did not use the ''relative to a clearly identified candidate'' language, *see* §§608(c) & (f), which was found to be problematic in section 608(e)(1).

The Court, having solved the statute's vagueness problem, next turned to the question of whether section 608(e)(1), as narrowly construed by the Court, nevertheless continued to impermissibly burden the speaker's constitutional right of free expression. The Court found the government's interest in preventing corruption and the appearance of corruption, although adequate to justify contribution limits, was nevertheless inadequate to justify the independent expenditure limits. Therefore, the Court held section 608(e)(1)'s limitation on independent expenditures unconstitutional, even as narrowly construed.

In sum, in this portion of its opinion, the *Buckley* Court did not adopt a new definition of the term ''expenditure'' for all of FECA. Rather, the Court held that the limits on independent expenditures imposed on individuals and groups should be narrowly construed to apply only to ''express advocacy,'' and that these limits were nevertheless unconstitutional even as so limited. Because the limits on independent expenditures in section 608(e) were ultimately struck down by the Court, the narrowing construction of that section became, in a practical sense, irrelevant.

The only other portion of the *Buckley* decision that raises the ''express advocacy'' narrowing construction is the Court's discussion of reporting and disclosure requirements under FECA section 434(e). It is here that the Court makes it absolutely clear, in unambiguous language, that *political committees and candidates are not entitled to the benefit of the narrowing ''express advocacy'' construction* earlier discussed in section 608(e).

The Court begins its discussion of reporting and disclosure requirements, by noting that such requirements, ''as a general matter, directly serve substantial governmental interests.'' *Buckley*, 424 U.S. at 68. After concluding that minor parties and independents are not entitled to a blanket exemption from FECA's reporting and disclosure requirements, the Court moved on to a general discussion of section 434(e).

As introduced by the Court, ''Section 434(e) requires '[e]very person (*other than a political committee or candidate*) who makes contributions or expenditures' aggregating over $100 in a calendar year 'other than by contribution to a political committee or candidate' to file a statement with the Commission.'' *Id.* 74–75 (emphasis added). The Court noted that this provision does not require the disclosure of membership or contribution lists; rather, it requires disclosure only of what a person or group actually spends or contributes. *Id.* at 75.

The *Buckley* Court noted that the Court of Appeals had upheld section 434(e) as necessary to enforce the independent expenditure ceiling discussed above—section 608(e). *Id.* at 75. The Supreme Court, having just struck down these independent expenditure limits, concluded that the appellate court's rationale would no longer suffice. *Id.* at 76. However, the *Buckley* Court concluded that section 434(e) was ''not so intimately tied'' to section 608(e) that it could not stand on its own. *Id.* at 76. Section 434(e), which predated the enactment of section 608(e) by several years, was an independent effort by Congress to obtain ''total disclosure'' of ''every kind of political activity.'' *Id.* at 76.

The Court concluded that Congress, in its effort to be all-inclusive, had drafted the disclosure statute in a manner that raised vagueness problems. *Id.* at 76. Section 434(e) required the reporting of ''contributions'' and ''expenditures.'' These terms were defined in parallel FECA provisions in sections 431 (e) and (f) as using money or other valuable assets ''for the purpose of . . . influencing'' the nomination or election of candidates for federal office. *Id.* at 77. The Court found that the phrase ''for the purpose of . . . influencing'' created ambiguity that posed constitutional problems. *Id.* at 77.

In order to eliminate this vagueness problem, the Court then went back to its earlier discussions of ''contributions'' and ''expenditures.'' The Court construed the term ''contribution'' in section 434(e) in the same manner as it had done when it upheld FECA's contribution limits. *Id.* at 78. It next considered whether to adopt the same limiting construction of ''expenditure'' that it had adopted when construing section 608(e)'s limits on independent expenditures by individuals and groups.

''When we attempt to define 'expenditure' in a similarly narrow way we encounter line-drawing problems of the sort we faced in 18 U.S.C. §608(e)(1) (1970 ed., Supp. IV). Although the phrase, 'for the purpose of . . . influencing' an election or nomination, differs from the language used in §608(e)(1), it shares the same potential for encompassing both issue discussion and advocacy of a political result. The general requirement that 'political committees' and candidates disclose their expenditures could raise similar vagueness problems, for ''political committee'' is defined only in terms of amount of annual ''contributions'' and ''expenditures,'' and could be interpreted to reach groups engaged purely in issue discussion. The lower courts have construed the words ''political committee'' more narrowly. *To fulfill the purposes of the Act they need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate. Expenditures of candidates and of ''political committees'' so construed can be assumed to fall within the core area sought to be addressed by Congress. They are, be definition, campaign related.*

''But when the maker of the expenditures is not within these categories—when it is an individual other than a candidate or a group other than a political committee—the relation of the information sought to the purposes of the Act may be too remote. To insure that the reach of §434(e) is not impermissibly broad, we construe ''expenditure'' for purposes of that section in the same way we construed the terms of §608(e)—to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate''. *Id.* at 79–80 (footnotes omitted) (emphasis added).

The Court in *Buckley* could not have been more clear. When applied to a speaker that is neither a political candidate nor a political committee, the term ''expenditure'' in section 434(e) must be narrowly construed under the ''express advocacy'' standard. However, when applied to organizations that have as a major purpose the nomination or election of a candidate, the ''express advocacy'' limiting construction simply does not apply. The activities of these groups are, by definition, campaign related, and legitimately subject to regulation under FECA.

This, of course, is the only sensible reading of FECA. To suggest that political candidates, political parties, or political committees can escape FECA's regulatory reach by merely eschewing the use of express words of advocacy, reduces the law to meaninglessness. It may be necessary, as the Court held, to give advocacy groups that are not primarily engaged in campaign-related activity a bright-line test that will enable them to avoid regulatory scrutiny. But organizations whose very purpose is to influence federal elections need no such safety net, and have not been given one.

IMPLICATIONS FOR REGULATION OF SECTION 527 ORGANIZATIONS

FECA's definition of a ''political committee'' mirrors the Internal Revenue Service's definition of a Section 527 ''political organization.'' Under FECA, a ''political committee'' is, among other things, ''any committee, club, association, or other group of persons which . . . makes expenditures aggregating in excess of $1,000 during a calendar year.'' 2 U.S.C. §431(4)(A). The term ''expenditures'' includes, among other things, ''any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person *for the purpose of influencing any election for Federal office*.'' 2 U.S.C. §431(9)(A)(i) (emphasis added).

Under the Internal Revenue Code, a Section 527 political organization is defined as ''a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated *primarily for the purpose* of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.'' 26 U.S.C. §527(e)(1) (emphasis added). An ''exempt function'' within the meaning of section 527 ''means the function of *influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office* of office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.'' 26 U.S.C. §527(e)(2) (emphasis added).

Thus, any organization that is a Section 527 organization is, by definition, organized and operated primarily for the purpose of ''influencing or attempting to influence the selection, nomination, election, or appointment of any individual'' to public office. *See* 26 U.S.C. §527(e)(2). Such an organization satisfies the ''major purpose'' standard established by the Supreme Court in *Buckley*, and may therefore be subject to reasonable public disclosure of its sources of funding for its political activities. *Buckley* offered protection to issue-oriented speakers and groups that are not organized for the explicit purpose of influencing election outcomes. Section 527 organizations, however, are subject to reasonable mandatory public disclosure requirements by virtue of their central mission.

CONCLUSION

There is no question that the Supreme Court in *Buckley* was concerned with protecting the rights of advocacy groups and individuals to engage in constitutionally protected ''issue advocacy.'' The Court was particularly concerned that the Federal Election Campaign Act, as written, would become a trap for unwary or unsophisticated political speakers. However, the Court also recognized that there are some groups of speakers—political candidates, political parties, and political committees—whose major purpose is engaging in electoral politics. For

these speakers, there is no danger of trapping the unwary, and thus, the Court provided them with no special constitutional protection. The actions of political candidates, political parties, and political committees are assumed to be campaign-related, and they are therefore appropriately subject to federal disclosure laws.

In order to qualify for tax exempt status under Section 527 of the Internal Revenue Code, an organization's primary purpose must be to influence election outcomes. Because a Section 527 organization is, by definition, primarily engaged in political activity, it satisfies the ''major purpose'' test promulgated in *Buckley*. Thus, there is no constitutional impediment to subjecting Section 527 Committees to reasonable disclosure laws. The ''express advocacy'' protections that the Supreme Court promulgated in order to protect unwary political speaker, as the Court itself explicitly recognized, have no applicability in the context of an organization whose primary purpose is engaging in electoral politics. Senate Bill 2582, which clarifies that tax exemption under Section 527 is available only to organizations regulated as ''political committees'' under FECA, as well as the more limited Senate Bill 2583, which simply requires public disclosure from Section 527 organizations, will both withstand constitutional scrutiny.

Very truly yours,

E. JOSHUA ROSENKRANZ,
President.

Mr. MOYNIHAN. Mr. President, while I support the objectives of this legislation, I regret that the Senate has chosen to rush ahead with a vote on this matter without following the customary Senate procedure. This bill should have been referred to its committee of jurisdiction, the Committee on Finance, and that committee ought to have had the opportunity to consider all its implications.

In fact, Chairman ROTH and I agreed to schedule a hearing on this matter for July 12. We contacted election and tax law experts to ask their opinions regarding fundamental questions surrounding Section 527 organizations.

As we thought, there are constitutional questions, and the possibility of unintended consequences that might result from this or similar legislation. The careful examination that Senator ROTH and I had planned is going to be cut short by our actions today. Without that careful examination, we can only hope that our conduct will withstand judicial scrutiny and not create additional problems.

Mr. LEVIN. Mr. President, I am pleased to join my colleagues Senators MCCAIN, FEINGOLD and LIEBERMAN in voting to send to the President H.R. 4762, a bill that hopefully will lead to closing one of the gaping loopholes in our Federal campaign finance laws. I use the words ''lead to'' because we aren't closing the so-called 527 loophole here today—we are forcing the disclosure of the contributors who use the loophole. Just as the disclosure of soft money hasn't yet ended the soft money loophole, this disclosure won't automatically close the 527 loophole. Most of our reform work lies ahead. But, our action today will hopefully give us momentum toward ending both the Section 527 loophole and the soft money loophole.

Having been in the Senate over 20 years, now, I've witnessed how slow and frustrating the legislative process can be, and I've also witnessed how we as an institution can come together quickly and directly when we see a compelling need to do so. Senators LIEBERMAN, DASCHLE, MCCAIN, FEINGOLD and I introduced legislation in the Senate, similar to H.R. 4762, in April of this year. With the upcoming November elections we were ever aware of the explosion in sham issue ad campaigns by anonymous contributors across the country that the public was going to experience this year without Section 527 reform. We wanted to beat the clock and get this legislation in place in time to have an effect on this year's campaigns.

With the leadership of a committed group in the House, and a significant bipartisan majority supporting such reform in the Senate, we have been able to do that. I commend the many dedicated House members and Senators who worked to bring this vote about over the past few weeks. The reforms we are passing today will have a meaningful effect on the campaigns being run this year.

The Section 527 loophole allows undisclosed, unlimited contributions. These are stealth contributions—tens of millions of dollars of stealth contributions that are off the campaign finance radar screen. How does that happen—that an organization that claims—on its own—to exist for the purpose of influencing an election can receive unlimited contributions and kept them secret? Well, it happens because these organizations seeking a tax exemption under Section 527 of the Internal Revenue Service Code say one thing to the IRS to get the tax exemption and say the opposite to the Federal Election Commission to avoid having to register as a political committee.

The Internal Revenue Service Code defines an organization subject to a tax exemption under Section 527 as an organization, ''influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State or local public office . . .'' The Federal Election Campaign Act defines a political committee which is subject to regulation by the FEC and that means disclosure as an organization that spends or receives money ''for the purpose of influencing any election for Federal office.'' So people creating these organizations are claiming, with a straight face, that they are trying to influence an election in order to get the benefits of one agency while representing they are not trying to influence an election in order to avoid the requirements of another. We often say, ''You can't have it both ways,'' but persons forming these organizations, Mr. President, turn that saying on its head. They are, so far, having it both ways, and our campaign finance system and the respect and trust of the American people in our elections and government are paying the price.

Section 527 was created by Congress in the 1970's to provide a category of tax exempt organizations for political parties and political committees. While contributions to a political party or political committee are not tax deductible, Congress did provide for a tax exemption for money contributed and spent on political activities by an organization created for the purpose of influencing elections. At the time Congress established the tax exemption, it assumed that such organizations would be filing with the FEC under the campaign finance laws for the obvious reason that the language for both coverage by the IRS and coverage by the FEC were the same—''influencing an election.'' Consequently it was assumed that Section 527 didn't need to require disclosure with the IRS, since the FEC disclosure was considerably more complete.

The legislation before us would require Section 527 organizations to file a tax return, something they are not required to do now, and disclose the basic information about their organization as well as their contributors over $200.

As good and important as this bill is, however, it does not stop the unlimited aspect of these secret contributions, nor the unlimited contributions permitted through the soft money loophole. This victory today is but one battle in the overall campaign to enact the McCain-Feingold bill, and I look forward to continuing to work with my colleagues to make that happen.

Mr. MCCAIN. Mr. President, I would like to address an issue of importance with respect to the 527 disclosure debate, and that is the constitutionality of H.R. 4762. I assert that the 527 disclosure legislation is Constitutional.

Among other things, the legislation requires 527 organizations claiming tax exempt status to disclose their members who make significant contributions to support the 527's political advocacy. Some opponents maintain that the legislation runs afoul of the Supreme Court ruling in NAACP v. Alabama, where as most of you know, the NAACP was protected from having to disclose its membership list to the Alabama government

The 527 disclosure legislation complies with the Constitution's protection of freedom of association upheld in NAACP v. Alabama. It does not require the disclosure of membership rosters, per se, just the members who are making politically related donations. More important, it does not constitute a significant restraint on members' rights to associate freely.

It is important to note that the circumstances are different here than those that surrounded the Alabama government's treatment of the NAACP during the 1950's and 1960's. The Supreme Court recognized that the members of the NAACP had every right to be concerned for their own and their families' safety if their identities were

publicly disclosed. The prospect of public identification would have significantly discouraged people of color from joining the NAACP. While political contributors to 527 organizations may prefer to avoid public scrutiny, they have no need to fear for their lives as a result of that scrutiny.

That said, public safety is by no means the principal standard by which the 527 disclosure legislation will be judged. In the NAACP v. Alabama decision, the Supreme Court acknowledges that a valid governmental purpose must be weighed against the tendency for the disclosure requirement to abridge an individual's freedom of association. The decision emphasized that the governmental purpose for disclosure—in this case to prevent corruption of the American political system—must be achieved in the most narrow manner possible.

Like our Congressional leaders, I believe the more disclosure the better—as long as the associated requirements are constitutional. Focusing narrowly on 527 organizations is one thing that sets H.R. 4762 apart from the Smith-McConnell legislation, to ensure that the legislation survives a constitutional test. I would like to submit a copy of the Smith-McConnell legislation, the Tax-Exempt Political Disclosure Act, into the record.

The Smith-McConnell legislation sweeps in business and labor organizations. As I said, disclosing their political activities is a laudable goal. I have advocated a similar approach, but one that would include bright line tests to determine precisely when contributions and expenditures would have to be disclosed. Those bright line tests, such as limiting the disclosure requirement to a time period close to an election, are lacking in the Smith-McConnell bill.

Unlike business and labor organizations, which engage in activities completely unrelated to elections, 527's are clearly political organizations. 527 organizations by law must have the function of influencing or attempting to influence elections. The Supreme Court in the Buckley decision upheld federal disclosure laws for these types of organizations. When it comes to disclosure laws for business and labor organizations, concerns about vagueness and overbreadth come into play.

527 organizations proliferated during the primary campaign season. Many had obscure names that made it hard to guess even the types of members funding political advocacy on behalf of each 527, much less their identities. Contrary to the 527's, most labor and business organizations have established identities, and clear-cut positions and purposes that go beyond funding issue ads. Since we have no window into the world of 527's, a disclosure requirement is more valid when compared with a disclosure requirement affecting labor and business organizations.

Unlike most, if not all, labor and business organizations, there is no way to determine how many members there are in a 527. In the example I often cite, there were only two contributors, each funneling what appears to be at least one million dollars into the accounts to be used for campaign advocacy. While we may have no idea how many contributors there are in a 527, or how much each contributed, you can bet their favored candidates know.

In a press conference announcing introduction of his bill, Senator MCCONNELL admits the ''dubious constitutionally'' of his proposal. In order to regain the American public's trust, it is important that we support a proposal we feel confident will withstand the Court's scrutiny. Thank you, Mr. President.

Ms. SNOWE. Mr. President, I rise today in support of the legislation sent to us by the House concerning disclosure for so-called ''Section 527 organizations''.

I want to thank the efforts of those involved in making this day a reality, and that includes a bipartisan group from both sides of the aisle and both sides of the Hill who have taken a leadership role in working toward restoring Americans' faith in its election system. Senator MCCAIN's herculean efforts and leadership on this issue have made today's vote possible. In addition, Senator FEINGOLD's leadership has been invaluable, and Senators LIEBERMAN and JEFFORDS and Congressmen SHAYS, MEEHAN, and CASTLE, have worked very hard to ensure that this legislation was both considered and passed.

I believe that disclosure of campaign activities is the most fundamental component of campaign finance reform. On the one hand, proponents of measures like the McCain-Feingold bill point to greater disclosure as part and parcel of additional reforms. On the other hand, opponents have argued that, rather than more comprehensive reforms, what we really need is simply more disclosure on what we already have. So disclosure should be common ground where we can all come together, a point proved by the overwhelming support for disclosure of 527 organizations in the House on a vote of 385–39.

As we know, these organizations have incorporated under the 527 section of the tax code to get tax exempt status to influence federal elections, but then they argue to the Federal Elections Commission that for their purposes these organizations aren't influencing federal elections, simply because they don't expressly advocate for the election or defeat of a particular candidate.

Right now, they don't have to disclose any of their activity—who they are, where they get their funding, and where they spend their money. Under this legislation, they will have to disclose on all their activities, and because political activities are all they do, that is as it should be.

It has also been expressed that if we are to target 527's, we should also have increased disclosure for other organizations that engage in political activities. And I couldn't agree more. Because the American people ought to know who these groups are, their major sources of funding, and where they are spending their money if they are working to influence a federal election. It's that simple.

Prior to this vote on 527's, we were working on legislation that would do just that—a bipartisan, bicameral measure that would satisfy the concerns that have also been raised about the scope of disclosure—that it not be so broad as to cover all manner of activities that have nothing to do with elections.

So we crafted a bill that was neither overly broad or vague. We narrowly and clearly defined political activities as those that mention a candidate for office, targeted specifically to the candidate's electorate, within a time frame near an election. And we only targeted large-scale communications so grassroots organizations will not be affected.

Our framework for this expanded disclosure drew from an amendment that Senator JEFFORDS and I, along with Senators MCCAIN, FEINGOLD, LIEBERMAN, and others, developed and introduced in early 1998. Based on a proposal developed and advanced by constitutional scholars, our measure was designed to withstand constitutional scrutiny, address some of the most egregious campaign abuses, and focus on areas where we know the Supreme Court has already allowed us to go—like disclosure.

We've already been to the Senate floor twice with this language, and I'm proud to say that the constitutional arguments made against our provision quite simply didn't hold water. And a majority of the Senate went on record in support of our provision.

In short, the three major provisions of the bill we were working on could be summed up as follows—disclosure, disclosure, and, finally, disclosure. That's what we're talking about here—sunlight, not censorship. Not speech rationing, but information.

I cannot emphasize enough that our effort would not have prevented anyone from making any kind of communication at any time saying anything they want. All we said is, if you're attempting to influence a federal election, we ought to know who you are, your major sources of funding, and where you're spending your money.

As the Brennan Center for Justice stated to me in a letter I had included in the RECORD in our first debate on Snowe-Jeffords, and I quote, ''As the Supreme Court has observed, disclosure rules do not restrict speech significantly. For that reason, the Supreme Court has made clear that rules requiring disclosure are subject to less exacting constitutional strictures than direct prohibitions on spending.'' So if the Congress is truly serious about increased disclosure, there is no reason

why they should be able to support our approach.

The fact is, we all have to disclose as candidates, and we should. Is it unreasonable when we know groups running ads or sending out mass mailings to the public are influencing federal elections to ask them to disclose as well?

We know, for instance, that in the 1995–1996 election cycle, the Annenberg Public Policy Center estimates that between $135 to $150 million was spent by outside groups not associated with candidates on television ads. In the last cycle, that number jumped to between $275 to $350 million—more than double. But what we don't know is how much is being spent on efforts like mass mailings or phone banks, or who is funding them, and this legislation is designed to tell us.

As for those so-called issue ads, if any doubt remains about the real intent of many of the broadcast ads we see, the Brennan Center recently released a report on television advertising in the 1998 congressional elections. What did they find? When all the ads were evaluated in terms of how many within two months of the general election were actually political ads and how many were simply discussing issues or legislation, 82 percent were seen as campaign ads. Eighty-two percent. There's no question what these ads are attempting to do—yet, under current law, they fly right under the radar screen.

So, in short, our bipartisan approach got at the largest abuses while answering the critics who say that what's good for the 527 organizations are good for other groups and unions and corporations as well. Unfortunately, we did not reach agreement with the House on such an approach this year—but our work generated momentum for consideration and passage of this 527 bill. And we must look at this as a significant first step. Hopefully, we will have the opportunity to build on this legislation with the broader approach of Snowe-Jeffords.

The passage of this bill should also make it that much more difficult for those who supported it to now go back and say we shouldn't have greater disclosure for other groups engaging in political activities when Snowe-Jeffords is introduced next year. In other words, what we have done with this legislation is to throw a boulder in what has until this point been the still and brackish pond of the campaign finance status quo, and the ripple effect will continue expanding ever outward.

Again, I want to thank everyone involved in this great victory and I hope we will move forward to expand our efforts on campaign finance reform in the next Congress.

INTERNAL REVENUE SERVICE

Mr. MOYNIHAN. I understand that this legislation would allow the Secretary of the Treasury to partner with other Federal agencies, principally the Federal Election Commission, in a manner similar to that contemplated under the bill reported by the Ways and Means Committee. Is that understanding correct?

Mr. FEINGOLD. That is correct. We want to allow the Internal Revenue Service to enforce these disclosure rules with the assistance and cooperation of the Federal Election Commission.

Mr. MCCAIN. Mr. President, as sponsor, I would like to make the final comments.

Mr. MCCONNELL. Mr. President, this debate has come a long way from the days of trying to regulate the speech of politicians and other major players on the American political scene. Just a few years ago, folks on the other side of the aisle were trying to get taxpayer funding for elections, spending limits for campaigns, and regulation of any group that mentioned a candidate in an ad two months before an election day. As recently as last year, there were measures being debated in the Senate that would have devastated the Republican Party in trying to compete with the Democrats and with well-funded outside groups who are almost wholly and completely affiliated with the Democrats—groups such as the labor unions, the plaintiffs' lawyers, the Sierra Club, and the League of Conservation Voters.

This particular bill before us will not put Republicans at a disadvantage in this fall election. And, of course, it will not put Democrats at any disadvantage because it doesn't affect their political affiliates, the unions and the trial lawyers. In fact, it's hard to tell exactly who will be put at a disadvantage by this bill because there are so few groups that will actually be impacted. So, in many respects, it is a relatively benign and harmless bill.

But, let me be clear, there is an important constitutional principle at stake here—even though it may only affect a handful of groups in this country. This bill takes us down the constitutionally dubious path of disclosure related to issue advocacy, which the Supreme Court has said, falls outside of the boundaries of government regulation. In fact, the federal courts following Buckley v. Valeo have routinely struck down attempts to regulate speech that does not expressly advocate the election or defeat of a federal candidate. Just two weeks ago, the Second Circuit Court of Appeals struck down the latest attempt to regulate issue advocacy as a clear violation of the First Amendment. Nevertheless, I say to my Republican colleagues, particularly those who are up for election this year, that is a pretty hard argument to explain in a political campaign. The constitutional distinction between issue advocacy and express advocacy is complex and does not get reduced to a campaign commercial very easily.

So in light of the limited impact of this relatively benign bill, I recommend to my Republican colleagues that they vote for this bill. I will not be voting for it because I do think the constitutional law in this area is rather clear. But, ultimately, this is not a spear worth falling on 4 months in advance of an election. This vote will insulate them against absurd charges that they are in favor of secret campaign contributions or Chinese money or mafia money.

With regard to the few groups who may be in the 527 area, they will have a choice to make, either to no longer be organized under section 527 or to go to court. And, these groups will have to weigh the costs and make that choice.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, today, indeed, marks a seminal day in the battle to reform our electoral system and restore the faith of the American citizenry that ours is a government of and for the people. This is a vote for campaign finance reform. If the Senate approves this legislation, it will be the first campaign finance reform bill to become law in 21 long years. It will be action that is long overdue.

Whether we want to admit the fact or not, perception has an unfortunate tendency to become reality. And the American people perceive the Congress as controlled by the monied special interests. If we are to ensure the public's faith in its Government, we must obliterate that perception. This bill, although admittedly a very small step, is a step towards ending that perception. This is a step we should be proud to take.

This bill will not solve what is wrong with our campaign finance system. It will not do away with the millions of soft money dollars that are polluting our elections. We must yet undertake the task of doing away with soft money and make our Government more accountable to the people we represent.

It will give the public information regarding one especially pernicious weapon that is being used in modern campaigns. It is an egregious and outrageous insult to the very principles of how democracies function.

The bill is fair. It affects both parties. It affects interests on both sides of the aisle. It stifles no speech. It curbs no individual's rights, and it is clearly constitutional. If the Senate approves it today, it will become law, and the American people will be well served.

Before I close, I again thank the many who were involved with this issue. Many in the House courageously fought to pass this legislation. I thank and note again Congressmen CHRIS SHAYS, MARTY MEEHAN, MIKE CASTLE, LINDSEY GRAHAM, and AMO HOUGHTON who all worked tirelessly on this legislation. If it were not for their courage and tenacity, we would not have this legislation before the Senate today.

In the Senate, a bipartisan coalition of those who believe in reform refused to relent on this matter: Senators SNOWE and LEVIN played key roles in

ensuring we move forward. Of course, I must pay special note of all the work done by Senators LIEBERMAN and FEINGOLD. I am proud not only to call them friends but partners in this crusade to return the Government to the people. I could be in no better company.

As I noted last night to all those who believe in reform, today is only the first step, but it is a great first step and it is, indeed, a great day for democracy and a Government that is accountable to the governed. I urge my colleagues to support this legislation.

Mr. President, I yield my remaining time to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut has 25 seconds remaining.

Mr. MCCAIN. I ask unanimous consent that the Senator from Connecticut be allowed to speak for 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank my distinguished colleague from Arizona whom I have come to call our commanding officer in the war for campaign finance reform. I am proud to serve under him.

In this long struggle to cleanse our campaign finance system, we are about to achieve a victory. In a campaign finance system that is wildly and dangerously out of control today, we are about to draw a line. We are about to establish some controls based on the best of America's national principles.

The campaign finance reform adopted after the Watergate scandal had two fundamental principles: that contributions to political campaigns be limited, and that they be fully disclosed.

These so-called 527 organizations totally violate and undermine both of those principles. Individuals, corporations, and associations can give unlimited amounts to 527 organizations, and those contributions are absolutely secret, unknown to the public. The contributors then audaciously enjoy a tax benefit for those contributions. Today, we say no more of that. Unfortunately, contributions will continue to be unlimited to 527 organizations, but at least now the public will know.

As Senator MCCAIN indicated, this is not the end of the effort to reform our campaign finance system. It is only the beginning, but it is a significant beginning. I urge my colleagues across the aisle to support it. I thank the Chair.

Mr. MCCAIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is, Shall the bill, H.R. 4762, pass? The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from New Hampshire (Mr. GREGG) is necessarily absent.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

The PRESIDING OFFICER (Mr. BUNNING). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 92, nays 6, as follows:

[Rollcall Vote No. 160 Leg.]

YEAS—92

Abraham	Edwards	Lugar
Akaka	Enzi	McCain
Allard	Feingold	Mikulski
Ashcroft	Feinstein	Moynihan
Baucus	Fitzgerald	Murkowski
Bayh	Frist	Murray
Bennett	Gorton	Reed
Biden	Graham	Reid
Bingaman	Gramm	Robb
Bond	Grams	Roberts
Boxer	Grassley	Rockefeller
Breaux	Hagel	Roth
Brownback	Harkin	Santorum
Bryan	Hatch	Sarbanes
Bunning	Hollings	Schumer
Burns	Hutchinson	Sessions
Byrd	Hutchison	Shelby
Campbell	Jeffords	Smith (NH)
Chafee, L.	Johnson	Smith (OR)
Cleland	Kennedy	Snowe
Cochran	Kerrey	Specter
Collins	Kerry	Stevens
Conrad	Kohl	Thomas
Craig	Kyl	Thompson
Crapo	Landrieu	Thurmond
Daschle	Lautenberg	Torricelli
DeWine	Leahy	Voinovich
Dodd	Levin	Warner
Domenici	Lieberman	Wellstone
Dorgan	Lincoln	Wyden
Durbin	Lott	

NAYS—6

Coverdell	Inhofe	McConnell
Helms	Mack	Nickles

NOT VOTING—2

Gregg	Inouye

The bill (H.R. 4762) was passed.

Mr. REED. Mr. President, first, I commend my colleagues on both sides of the aisle for their persistence in negotiating a Section 527 disclosure bill that has passed both chambers of Congress. The overwhelming vote in both the House and Senate in support of H.R. 4762, a bill mirroring a successful amendment we made to the Defense Authorization bill several weeks ago, is an important step in fixing our broken campaign finance reform system.

Both parties have now acknowledged that some change in our campaign finance laws is warranted, the first such legislative consensus on this issue since technical changes were made in 1979 to the Federal Election Campaign Act of 1974.

A majority has agreed that Section 527 organizations need to both follow federal campaign law and to file tax returns. H.R. 4762, like our amendment to the Defense Authorization bill, requires Section 527s to disclose any contributors who give more than $200, and report any expenditures of more than $500. Unlike our original amendment, it requires a Section 527 organization that fails to disclose contributions and expenditures to the IRS to pay a penalty tax on the amounts it failed to disclose. The amendment we made to the Defense Authorization bill would have removed a Section 527's tax exempt status for the same violation. Although not as severe a penalty, I believe that this change in the House version of this legislation does reflect the spirit of the original Senate amendment.

Although disclosure is only part of the solution, the passage of H.R. 4762 ensures that the public understands what these committees are, who gives them their money, and how they spend that money to impact election outcomes. This law, once signed by the President, will close a major loophole and stop these stealth PACs from skirting campaign finance requirements, and I was pleased to vote in support of it. However, we still have much to do.

We cannot, and must not, rest with this vote today. Our campaign finance system still needs major overhaul if we are going to reduce the influence of almost unlimited amounts of campaign cash on our electoral system. Until a majority of our citizens believe again that our government is ''by and for'' the people, we cannot stop our battle to reform this process. We need to pass a ban on soft money, reduce skyrocketing campaign expectations, and return our electoral process to the people, where it belongs. The power in our country should rest with the vote, not with the purse.

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THE DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS, 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of H.R. 4577, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4577) making appropriations for the Departments of Labor, Health, and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2001, and for other purposes.

Pending:

Frist modified amendment No. 3654, to increase the amount appropriated for the Interagency Education Research Initiative.

The PRESIDING OFFICER. Under the previous order, there are now 7 minutes of debate prior to a vote on the Frist amendment, with 5 minutes under the control of Senator FRIST.

The Senator from Tennessee is recognized.

Mr. FRIST. Mr. President, my amendment fully funds the Department of Education's share of the Interagency Education Research Initiative, IERI, which is a collaborative joint research and development education effort between the Department of Education and the National Science Foundation and the National Institute of Child Health and Human Development.

Quality education depends on quality research. We need to know the answers, if our goal is accountability and student achievement, on what works and what does not work. As we all know, advances in education, as in other fields, depend on knowing what works and what doesn't. If you look at our past investments in research in the field of education, pre-K through 12,